"The right of the people to be secure against unreasonable interception of telephonic and telegraphic communications shall not be violated. The interception and divulgence of a private communication by any person not a party thereto is contrary to the public policy of this State, and shall not be permitted except by court order in unusual circumstances to protect the people. It is further declared to be the public policy of this State that detection of the guilty does not justify investigative methods which infringe upon the liberties of the innocent."

In State v. Siegel, supra, the Court was dealing with the validity of Court ordered interceptions under Section 94(a) of Article 35 and Section 125D of Article 27. The orders did not specify that the authority to intercept would terminate when the desired communication had been obtained; they did not require the interception to be executed as soon as practicable; and they did not require that the interception be conducted so as to minimize the interception of communications not otherwise subject to interception. Each of these provisions is required by §2518 of Title 18 (U.S.C.), which the Court held applicable; and for that reason, the orders were held invalid.

The underlying theory expressed by the Court is that: (1) in order for wiretaps to be conducted by State or local law enforcement officers in Maryland, there must be a State statute authorizing such conduct, which is provided at present by sections of Article 27 and 35; (2) the State statutory authority may be more restrictive, but not more liberal than the federal authority contained in Title 18 of the United States Code; and (3) to the extent the State statutory authority is broader than the federal, it is invalid and the federal provisions will control. I do not read the Siegel case as abrogating Section 125A of Article 27 or Sections 92 of Article 35, but only those procedures relating to Court ordered interceptions that exceed what is permitted in corresponding sections of the federal law, and the types of crimes, in excess of those stated in the federal law, for which wiretaps may be authorized.

H.B. 962 does repeal those two sections designed to preserve the privacy of Maryland citizens as well as Section 93 of Article 35, which, inter alia, prohibits the interception or attempted interception of telephonic communications, without consent of all parties to the conversation. See Robert v. State, 220 Md. 159, 169-171 (1959). It enacts in their place, in new Section 93(b) of Article 35, the following provisions:

"(2) It shall not be unlawful under this subtitle for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(3) It shall not be unlawful under this subtitle for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution, or federal or state law, or for the purpose of committing any other injurious act." (emphasis supplied).

These two new subsections are taken from Section 2511(2) of Title 18, and their effect when read together with the balance of H.B. 962, is to allow the police, and anyone else, to intercept, listen in, and record the private conversations of people where only one party to the conversation has given consent to such activity. The other party to the conversation is thus subject to having his conversation intercepted without his knowledge, without prior court approval, and without any need to show probable cause to believe that criminal activity of any kind may be